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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 30th May 1953

S.R.O. 1122.—WHEREAS the election of Shri Hari Singh, as a member of the Legislative Assembly of the State of Rajasthan, from the Jalore 'B' constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ugam Singh, s/o Shri Abhaya Singh, Elana, Tehsil Jalore, District Jalore;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAJASTHAN, BIKANER

ELECTION PETITION No. 314 OF 1952

Shri Ugam Singh, s/o Abhaya Singh Rajput, resident of Elana, Tehsil Jalore, District Jalore—*Petitioner.*

Versus

1. Shri Hari Singh Vakll, resident of Ncemla at present Jalore, District Jalore.
2. Shri Hazari Mal, resident of village Ahore, Tehsil Jalore, District Jalore.
3. Shri Ugamsee Bhag Chand Vakil, son of Daulat Raj Bhandari, resident of Jalore, District Jalore.
4. Shri Ugamsee Modi, son of Raghunathsec Modi, Pleader, Jalore, District Jalore.
5. Shri Nihalchand Bhandari, son of Roop Raj Bhandari, resident of Jalore, District Jalore.
6. Shri Ramchandra Singh, son of Khumsingh, resident of Jodhpur Kalayan Building, Ratanada Road, Jodhpur.
7. Shri Suratsee Modi, son of Bakhtawarsec Modi, resident of Jalore, District Jalore.
8. Shri S. T. Porwal, Bar-at-Law, outside Jalore Gate, Jodhpur.

Election Petition under Section 81 of the Representation of the People Act, 1951 questioning the Election of respondent No. 1 to the Rajasthan State Legislative Assembly from Jalore "B" Constituency in the General Election held in 1951-52.

CORAM:

1. Sri M. P. Asthana—*Chairman*.
2. Sri M. C. Bhandari—*Member*.
3. Sri Goverdhandas T. Gajria—*Member*.

Shri Mukat Beharilal Bhargava assisted by Shri Basheshwar Nath Bhargava, Shri Suraj Karan Acharya, and Shri Rawatmal Kochar, Advocates and Shri Bhanwarlal, Pleader for the petitioner.

Shri Thanchand Mehta, Advocate, assisted by Shri Bhopal Singh, Pleader for respondent No. 1.

Respondent No. 6, Shri Ramchandra Singh in person.

Shri Jiwant Dutt, Pleader for Respondent No. 8.

JUDGMENT

The petitioner is a voter in the Jalore "B" Constituency. In the last general election, the above eight respondents filed their nomination papers for being returned as members of the Rajasthan Legislative Assembly from Jalore "B" Constituency. The nomination paper of respondent No. 8 Shri S. T. Porwal, was rejected by the Returning Officer. Respondents Nos. 4, 5, and 7 withdrew from the contest. Only respondents 1, 2, 3 and 6 contested the election in which the respondent No. 1 was declared elected.

The petitioner's case is that respondent No. 8's nomination paper was improperly rejected by the Returning Officer which has materially affected the result of the election. He has also pleaded in para. 8 of the petition that the respondent No. 1 resorted to illegal and corrupt practices and exercised undue influence in securing votes the particulars of which he has given in Schedule A. However, on December 16, 1932 the petitioner's counsel Shri Rawatmal Kochar withdrew the allegations contained in para. No. 8 of the petition regarding corrupt practices, undue influence etc.

Respondents Nos. 6 and 8 filed written statements admitting the petition, which has been contested only by respondent No. 1, who is the returned candidate. The remaining respondents have not put in their appearance.

The respondent No. 1 denied that the order of the Returning Officer rejecting respondent No. 8's nomination paper was improper or illegal. According to him the rejection of the respondent No. 8's nomination paper was fully justified. In para. 14 of the written statement he has alleged:—

"That the electoral roll of the Jodhpur "B" constituency in which the name of the Respondent No. 8 is registered as an elector is sub-divided into parts and separate serial numbers are assigned to the electors entered in each part. The said respondent did not enter in the nomination a description of the part and the sub-division and consequently his nomination paper ought to have been rejected on that score also."

He has further denied that the result of the election has been materially affected by the rejection of the respondent No. 8's nomination paper.

On these pleas the following issues were framed by the Tribunal:—

Issue No. 1.—Was the nomination paper of respondent No. 8 improperly rejected as alleged; if so, has it materially affected the result of the election?

Issue No. 2.—Was the nomination paper of respondent No. 8 also liable to be rejected, as alleged in para. 14 of the written statement?

Issue No. 3.—To what relief, if any, is the petitioner entitled?

FINDINGS

Issue No. 1.—First part Exb. A-6 is a copy of the order passed by the Returning Officer rejecting the nomination paper filed by respondent No. 8. It runs as follows:—

"This is a nomination paper filled in by one Shivalal Trilokchand and the objection is that he has not submitted the entry of electoral roll where his name has been purported to be entered. The second objection is of age and the third of S. No. 8714 in col. No. 7. The reply is that he has already submitted a certified copy of the entry of the name and that he has given another certified copy about the exactness of his age which is 39. The next objection is of minor importance.

2. The fact is said to be that S. Shival has filed his nomination from Jalore "A" constituency as well as from this constituency and that the 2 certificates to which a reference has been made in his reply are said to be on the file of the nomination paper of that constituency and he agrees to this that those copies may be placed on that file but argues that these certificates can hold good for both the constituencies.
3. I do not, however, agree with this that certificates placed on other files can also serve as evidence for purposes of enquiring in this file also. Moreso as the objectors are clearly debarred from raising valid objections thereby. The article 33(6) of the Representation of the People Act, 1951 clearly lays down the procedure of providing such copies at the time of filing nomination on the shoulders of the candidate, and a candidate in one constituency cannot take shelter behind the plea that the copies are on other files. He could as well pay one nomination fee for both the constituencies, which is not the intention of the Legislature. I, therefore, hold this nomination paper as invalid. Announced.

(Sd.) *Returning Officer.*"

This order was passed on the objection filed by one Shri Uggamsee Modi, respondent No. 4. A copy of the objection is Exb. A-5, which runs as under:—

"With the nomination form of Shri Shival Trilokchand, the candidate has submitted the entry of the electoral roll where his name has been entered. Moreover I am sure there can be no entry in the electoral roll like Shival Trilokchand. His age as mentioned in the electoral roll was 21 years only, which is also not corrected.

As such the form of Shival Trilokchand Porwal be rejected.

Moreover he has given only serial No. as 8714 in col. No. 7, which does not give any correct idea where to find out his number in the Jodhpur "B" constituency. He ought to have given the ward No. also.

(Sd.) UGAMSEE MODI.

The 28th November, 1951."

It appears that respondent No. 8 also filed his nomination papers for contesting the seat in the Rajasthan Legislative Assembly from Jalore "A" constituency. Exb. A-5 is a copy of objection filed by Shri Chatter Singh Harji to that nomination paper. Exb. A-6 is a copy of the reply filed by respondent No. 8 and Exb. A-2 is a copy of the order passed by the Returning Officer over-ruling the objections and accepting the respondent No. 8's nomination from Jalore "A" constituency. Exb. P-2 runs as under:—

"The candidate S. Sheolal Porwal has filled in 2 nomination papers in Jalore "A" constituency and the objector has raised the objections (1) that he has not given ward No. etc., (2) that the names of proposers and seconders do not tally, (3) that his age does not tally, (4) that he has put his initials only, to which the candidate has replied that (1) he has given the certificate for his identification, (2) that these are minor mistakes, (3) that he has already submitted a certified copy as regards his age which is 39 years as corrected and (4) that he has not put his initials but his full signature.

I have gone through the objections and replies thereto and I am satisfied that the candidate is S. Sheolal Porwal himself and the certificates establish his identity and that objection No. 3 is a minor mistake and that he has put down his signatures.

- 1, therefore, hold that both these nomination papers have been correctly filled in and the objections are ruled out. I accept these nomination papers as valid.

(Sd.) R. SHIVAPURI,

Returning Officer, Jalore.

The 28th November, 1951."

It will thus appear that the objections filed against the nomination papers of the respondent No. 8 in both the constituencies viz., Jalore "A" and Jalore "B", were practically of the same nature except that in the case of Jalore "A" they were more in number. The Returning Officer rejected all the objections raised against the nomination papers for Jalore "A" constituency including those taken against the nomination paper filed for Jalore "B" constituency on the ground that the respondent No. 8 had not filed along with it a certified copy of the Jodhpur electoral roll containing his name as a voter as he did with the nomination paper for Jalore "A". The Returning Officer was satisfied about the identity of the respondent No. 8. He rejected the objections viz., that in the electoral roll, the age of respondent No. 8 was entered as 21 years only and that ward number in which the name of the respondent No. 8 was entered in the electoral roll had not been shown. Now the question for our consideration is as to how far the Returning Officer was justified in rejecting respondent No. 8's nomination paper for Jalore "B" constituency, simply on the ground that respondent No. 8 had neither filed a copy of the electoral roll for Jodhpur constituency nor a certified copy of the entries in the electoral roll containing his name as an elector along with his nomination paper for Jalore "B" constituency. It has been contended by respondent No. 1 in para. 10 of his written statement that since the name of Shri S. T. Porwal, respondent No. 8 was not registered in the electoral roll of the Jalore "B" constituency it was incumbent upon him to produce either a copy of the electoral roll in which his name was included or a certified copy of the relevant entries in such roll. The failure to do so on the part of Shri Porwal constituted a non-compliance with the provisions of section 33(6) of the Representation of the People Act, 1951 and his nomination paper was, therefore, rightly rejected under section 36 of the same Act.

It appears from the statement of the petitioner's counsel Shri Rawatmal Kochar, dated December 15, 1952 that respondent No. 8 did not file a copy of the electoral roll or a certified copy of entries in such roll along with the nomination paper for Jalore "B" constituency. It further appears from the order Exb. P-1/Ex. A-6 that respondent No. 8 had filed such a copy along with the nomination paper for Jalore "A" constituency and that he wanted it to hold good for both the constituencies, which the Returning Officer did not accept.

Section 33(5) and (6) of the Representation of the People Act of 1951 runs as follows:—

- "(5) On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that the Returning Officer may—

- (a) permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and
 - (b) where necessary, direct that any clerical or printing error in the said entries shall be overlooked.
- (6) If at the time of the presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer, he shall for the purposes of sub-section (5) require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll."

The idea underlying these provisions is that the Returning Officer of one Constituency is not expected to have the electoral rolls of other constituencies at the time of the scrutiny of the nomination papers of the constituency of which he is the Returning Officer. The law, therefore, has laid down sub-section (6) of section 33 and authorised the Returning Officer to require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such rolls in order that he may satisfy himself that the electoral roll number of the candidate as entered in the nomination paper is the same as entered in the said electoral roll. These provisions do not necessarily suggest that the Returning Officer should be satisfied regarding these particulars only by the production of a copy of the roll or a certified copy of the entries in the electoral roll in which the name of the candidate appears. In our opinion there can be other mode also than the one laid down in section 33(6) of the Act. As for example if the Returning Officer

has in his possession a copy of the necessary electoral roll or a certified copy of the entries in such roll produced by the candidate in question or by any other candidate, he can refer to such documents to satisfy himself as to the correctness of the entries in the nomination paper and should not insist upon the technicality of producing a copy of the said electoral roll or a certified copy of the entries in such roll. What is laid down in section 33, sub-section (5) of the Representation of the People Act, 1951, is that "on the presentation of the nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls." Therefore it follows from this that if the Returning Officer has got sufficient materials available with him at the time of the presentation of the nomination paper to satisfy himself as regards the names and electoral roll numbers of the candidate, he should not insist upon the production of a copy of the electoral roll or a certified copy of the entries in the said roll. As to do this would amount to becoming too technical which is not the intention of the Legislature, which is clear from the words of section 36(4) of the Representation of the People Act, 1951.

In this case it is an admitted fact that the respondent No. 8 filed two nomination papers one for Jalore "A" constituency and the other for Jalore "B" constituency on 26th November, 1951 before the Returning Officer at one and the same time and had attached a certified copy of the entry in the electoral roll in which his name appeared, along with one, and under section 33(5) of the Representation of the People Act, 1951, since he did not ask the respondent No. 8 to produce another certified copy, it should be presumed that the Returning Officer was satisfied regarding the particulars mentioned in section 33(5) of the Act, as he appears to have considered one certified copy quite sufficient for both the nomination papers. If he had any doubts as to these particulars, it was his duty to have asked the respondent No. 8 to either produce a copy of the electoral roll or a certified copy of the relevant entry but this he could not do so he had one certified copy of the necessary entry available with him which was quite sufficient for the purpose of his satisfaction. Another important fact in this case is that the nomination paper of the respondent No. 8 for Jalore "A" constituency which was scrutinised on the same day by the same Returning Officer previous to the scrutiny of the nomination paper in question, had been accepted *vide* his order Exb. P-2. In view of this, the position taken by the Returning Officer in rejecting the respondent No. 8's nomination paper, appears to be anomalous. In our opinion the acceptance of the nomination paper for Jalore "A" constituency by one and the same Returning Officer, would amount to sufficient satisfaction for the fulfilment of the conditions laid down in section 33(5) of the Representation of the People Act, 1951. In this connection the following observations made by the Lucknow Tribunal in the case of *Brijnaresh Singh versus The Hon'ble Thakur Hukumsingh and others*, published in the Government of India Gazette Extraordinary, dated 20th December, 1952 at page 1030, are important:—

"Section 33, sub-section (6) of the Representation of the People Act, 1951 (hereinafter to be called the Act) provides that if at the time of the presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer, he shall for the purposes of sub-section (5) require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of relevant entries in such roll. The purpose mentioned in sub-section 5 is the satisfaction of the Returning Officer that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls. In order to satisfy the Returning Officer on this point the petitioner applied for and obtained a copy of the entry of his name in the electoral roll for his constituency and produced it before the Returning Officer along with his nomination paper. Sub-section (5) requires that on the presentation of a nomination paper, the Returning Officer should satisfy himself on the said point and apparently he was satisfied with the copy produced by the petitioner. Otherwise it was incumbent on him under sub-section (6) to require the petitioner to produce a duly certified copy. As he did not do so, the petitioner was not bound to produce any other certified copy. The sub-section throws the burden on the Returning Officer and not on the candidate, unless the latter is required to produce a certified copy. The Returning Officer need not always require a certified copy for being satisfied. Even if he is satisfied with any other evidence, he need not call upon

the candidate to produce a certified copy. In this view, whether the copy produced by the petitioner is a properly certified copy or not, there was no failure on his part to comply with the provisions of section 33, and the Returning Officer should not have refused his nomination under section 36, sub-section 2(d) of the Act, as he purports to have done."

This point had come up for discussion before the Election Tribunal Secunderabad. In the case of Laxman Rao *versus* Lakshminivas and others reported on page 2467 of the Government of India Gazette Extraordinary dated 21st November, 1952 in which the Tribunal while adopting a similar view, has on page 2469 observed as under —

"So far as issue No. 1(a) is concerned assuming that sub-section (6) of section 33 R. P. A. applied to this case we think that the Returning Officer was not justified in rejecting the nomination papers of these 2 candidates on the ground of non-production of the certified copies of the Electoral Rolls of the constituency in which their names appear as electors. Under sub-section 5 of section 33 R. P. A. it is the duty of the Returning Officer to satisfy himself that the names and electoral roll numbers of the candidates and their proposers and seconders as entered in the nomination papers are the same as entered in the electoral rolls. He is not absolved from this duty merely because the candidate when called upon to do so failed to produce the electoral rolls or certified copies thereof. It has been held in a number of cases that rejection of the nomination papers on this ground is improper. See in this regard Sen and Poddar page 106, "Basti District North East General Rural Constituency 1937—Kalap Raj *vs.* Bishambhar Nath Tripathi and another." See page 108. It was laid down in this case that the production of electoral roll is merely a rule of evidence. It is not necessary for the candidate or his proposer or seconder to produce a certified copy of the electoral roll, if objection is taken. It is the duty of the Returning Officer to summon the Rolls and verify himself. In that case, as in the present, the candidate had requested the Returning Officer to look into the Rolls himself, and satisfy himself on this point, but he refused to do so and rejected the nomination papers. The petitioner has produced his application before the Returning Officer embodying this request in the present case. See also Hammond page 97, case No. 14 Azamgarh (N.M.R.) 1931" Shiva Shankar Singh *vs.* Thakur Motisingh". (See page 99). In this case it was decided that the certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for the election. But it does not mean that the certified copy shall be the only evidence admissible in proof thereof. It is not necessary that the candidate should produce certified copies called upon, and rejection of his nomination paper for this reason is improper.

The learned pleader for the respondent relies on Sen and Poddar page 267 Coconada General Rural Constituency 1937 "Elu Vadapalli Garu *vs.* Bayya Suryanarayanamurthi Garu and Others". This case was decided under Rule 14(2) of 1936. The wording of this Rule was relied upon, which made it imperative on the candidate to produce electoral rolls and of the certified copies thereof. There is no such provision in the present Rules. This case cannot be taken as an authority. Moreover there are other cases which we have cited above under those very Rules in which a different view was taken. The learned pleader for the respondent also contends that all the cases except this Coconada General Rural Constituency case which he has cited, are regarding the proposers and seconders, and not with reference to a candidate, and therefore they are not applicable. We think there is no substance in this contention. The section 33 sub-section 5 and 6 do not purport to lay down different Rules for proposers and seconders and for the candidate. The rule is exactly the same for all. This is plain from the wordings of these Sub-sections. It is also contended on behalf of the respondent that the candidate was asked to produce the Rolls but he refused to do so. We do not think that this can make any difference. The candidates had, as their application in this connection clearly shows requested the Returning Officer to look into the Roll himself and had shown reason why they were unable to secure certified copies thereof. We think that on the circumstances it was incumbent on the Returning Officer who was also Returning Officer of Andole and Medak constituencies, and presumably in possession of these Electoral Rolls to look into them and satisfy himself. As we have said above it was his duty under section 33 Rule 5 to do this, he was not absolved therefrom by calling upon the candidates to produce certified copies of the Rolls, or because some one has raised objection in this connection. We therefore, think that the nomination paper was improperly rejected on this ground. It is not necessary in view of our decision on this point to give a finding as to whether the electoral roll was actually produced by the candidates as alleged by the petitioner or not. We therefore decide issue No. 1 (a) in favour of the petitioner.

It is thus clear that the Returning Officer need not always require a certified copy for being satisfied that a candidate is entered in the electoral roll as a voter, and even if he is satisfied with any other evidence, he need not call upon the candidate to produce a certified copy. In the present case respondent No. 3 did produce before the Returning Officer a certified copy of the entries relating to his name in the electoral roll of the Jodhpur constituency and he requested the Returning Officer to treat it as evidence for both the constituencies. The scrutiny of both the constituencies was held by the same Returning Officer and on the same day. He held the scrutiny of Jalore 'A' constituency nomination papers first and accepted respondent No. 8's nomination papers for that constituency. At the time of the scrutiny of the nomination papers of Jalore 'B' constituency, he was aware that respondent No. 8 was entered as a voter in the Jodhpur constituency. At that time he was in possession of a certified copy of the electoral roll containing respondent No. 8's name as an elector filed along with the nomination papers of Jalore 'A' constituency. It was the duty of the Returning Officer to have looked into that electoral roll and satisfied himself. It is clear from the order of rejection passed by the Returning Officer that while passing that order he was aware of the fact that a copy of the electoral roll containing respondent No. 8's name as a voter was in his possession and formed a part of the file of respondent No. 8's nomination papers for Jalore 'A' constituency. The Returning Officer was, therefore, not justified in rejecting respondent No. 8's nomination paper for Jalore 'B' constituency on the technical ground that he had filed only one and not two copies of the electoral roll. Therefore we come to the conclusion that the nomination paper of the respondent No. 8 was improperly rejected by the Returning Officer on the ground of non-production of either a copy of the electoral roll or certified copy of the entries in such roll in which his name appeared.

Next it has been urged on behalf of the respondent No. 1 that the certified copy of the electoral roll filed by respondent No. 8 showed his age to be 21 years only, and as such he is disqualified from contesting the election as a candidate being below 25 years and as respondent No. 8 failed to get the entry as to his age in the electoral roll corrected, it was not possible for the Returning Officer to accept his nomination paper in which his age was mentioned as 39 years.

It appears from the copy of the electoral roll Exb. A-2 that the age of respondent No. 8 was entered in the electoral roll as 21 years. On 14th November 1951, he applied to the Electoral Registration Officer that his age was wrongly shown as 21 years instead of 39 and also the circle number in his entry was wrongly entered as No. 3 instead of number 10 and requested that these mistakes be corrected. The Electoral Registration Officer, on the application of the respondent No. 8 ordered on 24th November 1951 vide order on Ex. A-7 on the same date (i.e. 14th November 1951) that the circle number be corrected as 10 instead of 3 but the age could not be corrected to 39 instead of 21. The respondent No. 8 made another application containing the same facts and the same request, addressed to the City Magistrate Jodhpur who was also the Electoral Registration Officer, and who passed the following order:—

"The circle number be corrected as No. 10 but as regards age, his age is entered as 21, in the Electoral Rolls. I personally know Shri Shival, Barrister, and he is about 40 years of age. But the Chief Electoral Officer has ruled that corrections in ages where the age falls between 21 and 25 should not be regarded as minor correction. From the affidavit filed by the applicant, the correct age works out to 39 as the date of birth is stated to be 27th September, 1912. The entry *prima facie* appears to be in correct regarding age.

(Sd.) SAMPATRAI MATHUR,

The 24th November, 1951.

Electoral Registration Officer, Jodhpur City."

It is thus clear from the second order that the Electoral Registration Officer personally knew respondent No. 8 whose age as entered in the electoral roll as 21 was *prima facie* incorrect and that in fact he was 39 years old, but he refused to correct the age simply because the Chief Electoral Officer had ruled that corrections in age where it fell between 21 and 25 years should not be regarded as minor corrections. However, the fact, remains that at the time the respondent No. 8 filed his nomination paper, his age as entered in the electoral roll was 21 years although in fact he was 39 years old. It has been argued by the learned counsel for the petitioner that the Returning Officer should have made a summary enquiry

under section 36, sub-section 2(a) and (b) of the Representation of the People Act 1951, which runs as under:—

“The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds:—

- (a) that the candidate is not qualified for being chosen to fill the seat under the constitution or this act; or (b) that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act;”

Section 19 of the Representation of the People Act, 1950, lays down the conditions of registration as a voter; and provides that subject to the foregoing provisions of part III of the Act, every person who is not less than 21 years of age on the qualifying date, shall be entitled to be registered in the electoral roll for that constituency. This means that so far as the age entered in the electoral roll is concerned, the only consideration is whether the person whose name is to be entered in the electoral roll has attained the age of 21 years or not. No enquiry about the actual age is contemplated under section 19 of the Representation of the People Act, 1951. As against this it has been argued by the learned counsel for respondent No. 1 that according to section 36(7) of the Representation of the People Act, 1951, for the purposes of this section, the production of a certified copy of any entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be unless it is proved that the candidate is disqualified under the Constitution or this Act, or that the proposer or seconder, as the case may be, is disqualified under sub-section 2 of section 33 of this Act, and that the age of respondent No. 8 as entered in the certified copy of the electoral roll was conclusive evidence that he was then 21 years old. The minimum qualification of age of an elector to be 21 years, has been prescribed in Article 326 of the Indian Constitution which is as under:—

“The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under the Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.”

The qualifications for membership of the Legislative Assembly of a State as laid down in Article 173 of the Constitution is that the person shall not be less than 25 years of age.

Now the question for determination is as to what is the power of the Returning Officer to enquire into the real age of a candidate, which as entered in the electoral roll, *prima facie* appears incorrect. In other words, is the Returning Officer empowered to hold an enquiry into the correct age of a candidate, under section 36(a) and (b) of the Representation of the People Act, 1951?

According to this section, it is the duty of the Returning Officer to make a summary enquiry and satisfy himself whether the candidate is qualified or is disqualified for being chosen to fill the seat under the Constitution or the Act. This shows that the Returning Officer can go into the question of age of a candidate at the time of scrutiny of the nomination papers to satisfy himself whether the candidate is qualified or is disqualified for the above purpose. This point has come up for discussion before various Election Tribunals the decisions of which have been reported in the Gazettes of India. Extraordinary (1) dated 13th November 1952 at pages 2396, r. t. u. v. Shri K. Subramaniam *versus* Abdul Hameed Khan and others; (2) dated 9-3-1953 page 784, Shri Aslam Khan *versus* Shri Fazlul Haq; (3) dated 20th November 1952, P. N. Bala Subramaniam *versus* C. R. Narasimha and others at page 2457 and (4) dated 19th November 1952 at page 2472 Jagan Nath Sharma *versus* Shri Shamcharan Gupta and others, in which it has been held that the Returning Officer and also the Election Tribunal have got power to go behind the age of a candidate as entered in the electoral roll, and hold an enquiry as to his correct age in order to see whether he is duly qualified to become a member of a State Legislative Assembly. This Tribunal has also dealt with the same point at great length, in the Election Petition No. 283 of 1952, Hakikutullah *versus* Nathusingh and others, decided on 30th April, 1953,

in which, after a very careful consideration of the provisions of Section 36(2) (a) and (b) and 7(a) and the above mentioned judgments, we have come to the following conclusion:—

"There is nothing in the words of section 36(7)(a) of the Representation of the People Act, 1951 which suggests that the entry in the electoral roll by itself, shall be conclusive so far as the qualifications of an elector are concerned. It merely says that the entry in the electoral roll shall be conclusive evidence of the right of any elector named in the entry to stand for election or to subscribe to a nomination paper, which is entirely different and distinct from making the said entry conclusive regarding the possession of the requisite qualifications by a person whose name is so entered, to be an elector so as to subscribe to a nomination paper. The words "evidence of right" in section 36(7)(a) of the Representation of the People Act, 1951 mean that in the absence of any other evidence to the contrary, the entry in the electoral roll shall be conclusive evidence of the right of any elector named therein to stand for election or to subscribe a nomination paper as the case may be. Therefore, it follows that if there is any evidence which negatives the right of any person to be entered in the electoral roll, as required by the provisions of article 326 of the Constitution, it can be enquired and looked into for the purpose of determining whether the person in question, is duly qualified to be an elector or a candidate for the House of People or the State Legislature, as the case may be. Our attention has been drawn to some of the cases decided on this point, under the old law and also under the present law, as to the powers of the Returning Officers and the Election Tribunals to hold an enquiry into the age of a candidate in spite of an entry in the electoral roll giving the requisite age, in order to determine whether the candidate in fact, possesses the requisite qualifications as required by the provisions of law, on the qualifying date, which was fixed as first day of March, 1950, according to section 21 of the Representation of the People Act, 1950. This could be done by the Returning Officer at the time of scrutiny of the nomination paper, under section 36(2)(a) and (b) of the Representation of the People Act, 1951. The consensus of opinion of the Election Tribunals, in case of an enquiry into the qualifications or disqualifications of a candidate for being chosen to fill the seat under the Constitution or the Representation of the People Act, 1951, is that the entries in the electoral rolls are not final, and the Returning Officers and the Election Tribunal can enquire into the said qualifications or disqualifications of the candidate in order to find out his eligibility to fill in a seat under the constitution or the Representation of the People Act. This view of the law has been adopted by the Election Tribunal Madras in the case of Shri K. Subramaniam Versus Shri Abdul Hameed Khan and others reported on page 2396 of the Government of India Gazette Extraordinary dated 13th November 1952 and it has been held therein that the entry in the electoral rolls as regards the age of a candidate is not conclusive and it was open to him to satisfy the Returning Officer that he was in fact more than 25 years which is the qualifying age for a candidate. We have very carefully gone through the judgments of the various Tribunals dealing with the question whether the entry of age of a candidate as entered in the electoral roll is conclusive or not and whether an entry in the electoral roll is conclusive or not and whether an enquiry as to his correct age could be made by the Returning Officer or the Election Tribunal and we are of the opinion that there is no provision either in the Representation of the People Act (Preparation of Electoral Rolls) Rules, 1950 which may suggest that the entry as to the age of a candidate in the electoral roll is final and conclusive and cannot be enquired into at the time of scrutiny or by the Election Tribunal. To be of a proper age required for being an elector or a candidate is a statutory qualification, the absence of which is a statutory disqualification about which there can be no waiver. If a person is really below 21 years or 25 years, which are the qualifying ages for an elector, and a candidate respectively, then he is inherently lacking in the statutory qualification to become either an elector or a candidate as the case may be. The electoral roll is therefore not final if the person whose name appears therein is under a statutory disqualification to be an elector *viz.*, that he was below 21 years on the qualifying date, which can be looked into by the Returning Officer or the Election Tribunal. As the minimum age of 21 years for an elector has been prescribed by the provisions of the Constitution, any contrary interpretation of any provisions of the Representation of the People Act, 1950 or 1951 or of the Representation of the People (Preparation of the Electoral Rolls) Rules, 1951 will not be valid as it would defeat the provisions of the Constitution. On a consideration of the relevant provisions of the Constitution of India and the law made by the Parliament relating to the elections, we have come to the conclusion that the lack of statutory qualifications or statutory disqualifications specially of a personal nature can be considered both by the Returning Officer and the Election Tribunal whether it is the case of a candidate or a proposer."

Taking into consideration the facts of this case and applying the above proposition of law, we see no reason now to take a view different from the one we have taken in the above mentioned case and hold that the Returning Officer and the Election Tribunal have powers to enquire into the correct age of the candidate. It was admitted by the learned counsel for respondent No. 1 on 19th February 1953 that the age of respondent No. 8 is about 39 years now. The Returning Officer also was satisfied that respondent No. 8 was not less than 25 years old at the time when he filed the nomination papers for Jalore-"A" constituency which were accepted by the Returning Officer in spite of respondent No. 8's age being entered in the electoral roll as 21 years. We are therefore of opinion that the objection as to the age of the respondent No. 8 raised by the respondent No. 1 in para. No. 12 of his reply is not maintainable and that the nomination papers of the respondent No. 8 could not be rejected on this ground. We, therefore, hold on this issue that the nomination paper of this respondent has been improperly rejected by the Returning Officer on the grounds alleged under this issue. Second Part of this issue will be discussed after Issue No. 2.

Issue No. 2.—It has been pleaded by respondent No. 1 in para. 14 of the written statement that the electoral roll of Jodhpur B constituency in which the name of the respondent No. 6 is registered as an elector is subdivided into parts and separate serial numbers are assigned to the electors entered in each part and as the said respondent did not enter in the nomination paper the description of the part and the sub-division, his nomination paper ought to have been rejected on that score also. A similar objection appears to have been taken against the nomination papers filed by respondent No. 8 for Jalore "A" constituency, but the Returning Officer overruled the same and accepted his nomination papers as he was satisfied from the certified copy of the entries in the electoral roll of Jodhpur constituency produced by the respondent No. 8 along with his nomination paper, that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper were the same as those entered in the electoral rolls. Since the respondent No. 8 was not an elector either in Jalore "A" constituency or in Jalore "B" constituency, but was an elector in Jodhpur constituency, in support of which he had produced a certified copy of the entries in the electoral roll in which his name appeared, the question of the Returning Officer verifying the details of the respondent No. 8's name etc. appearing in the nomination paper filed by him for "Jalore B" constituency, did not arise, as the Returning Officer was neither in possession of the electoral roll of the Jodhpur constituency nor was he the Returning Officer of this Constituency. Accordingly the nomination paper of the respondent No. 8 could be accepted or rejected only on the basis of the certified copy of the entries in the electoral roll, filed with the nomination paper of Jalore "A" constituency. This question has already been discussed by us under issue No. 1 and in view of our finding on that issue in favour of the petitioner viz; that an omission to file a separate certified copy of the entries in the electoral roll of the Jodhpur constituency along with the nomination paper of Jalore "B" constituency, by the respondent No. 8 in the circumstances of this case viz; that he had already filed one such copy with his nomination paper for Jalore "A" which was scrutinised by the same Returning Officer on the same day and accepted by him was not so fatal a defect as to justify rejection of the second nomination paper. The question whether the omission to mention the ward number of the Jodhpur constituency by the respondent No. 8 in the nomination paper in question does not arise, and as such the discussion of the case law on this question, which has been cited before us, becomes unnecessary. We, therefore come to the conclusion that the defect in the nomination paper of respondent No. 8, if any, in not entering in the nomination paper description of the part and the sub-division of Jodhpur B constituency was a technical defect but not of a substantial character and respondent No. 8's nomination paper for Jalore-B constituency was not liable to be rejected on this score. Issue No. 2 is decided in the negative.

Issue No. 1, second part.—The next question for consideration is whether the improper rejection of respondent No. 8's nomination paper has materially affected the result of the election in the constituency in question. In para. 13 of his written statement, the respondent No. 1 has alleged that the respondent No. 8 Shri Porwal was a dummy candidate, and the Official congress candidate from the Jalore-B constituency was Shri Ramchandra Singh, respondent No. 6 and that Shri Porwal never meant to seriously contest the elections and as a matter of fact withdrew from the contest in favour of Shri Jai Narain Vyas, a congress candidate from the Jalore "A" constituency. This contention of respondent No. 1 is further reinforced by the fact that the said Shri Porwal did not file any election petition before the Election Commission. The result of the election has not been, therefore, materially affected by the rejection of Shri Porwal's nomination paper and in this view of the matter also, the petition of the petitioner Shri Ugamsingh deserves to be dismissed.

It is a well settled principle of law that whenever it is proved that the nomination paper of any candidate has been improperly rejected by the Returning Officer, a presumption arises that the result of election in question has been materially affected and the same should therefore be declared void. It has also been held by a majority of the Election Tribunals except the Lucknow Election Tribunal in the case of *Shri Brijnarehsingh Versus Hon'ble Shri Thakur Hukumsingh and others*, reported in the Government of India Gazette, Extraordinary, dated 20th December, 1952 that very strong evidence is required to rebut this presumption. We have dealt with this point in some detail, in the case of *Chandranath Versus Kunwar Jaswantsingh and others*, reported in the Government of India, Gazette Extraordinary, dated 20th January, 1953, in which, after a very careful consideration of the provisions of Section 100(1)(c) of the Representation of the People Act, 1951, and the decisions of the various Election Tribunals, we have come to the conclusion that the presumption which initially arises, on account of improper rejection of a nomination paper by a Returning Officer, is capable of rebuttal and after consideration of the facts on the record of that case, we held that the result of the election in question had not been materially affected. To hold that this presumption is incapable of rebuttal is to import into the words of section 100(1)(c) of the Representation of the People Act, 1951 a meaning which was, in our opinion, never intended by the Legislature even. We have also discussed this point in another case reported in the Government of India Gazette Extraordinary, dated 3rd February, 1953 at page 261 in the case of *Shri Bankatlal Versus Shri Madan Mohan and others*, and held the same view as in the case of *Chandra Nath Versus Kunwar Jaswant Singh and others*, though in this case on the facts as proved we come to the conclusion that there was no material on the record to rebut the presumption. Same view has been taken by the Election Tribunal, Jaipur in the case of *Pt Harish Chandra Versus Raja Mansingh and others* reported in the Government of India Gazette Extraordinary, dated 24th April, 1953, in which the Election Tribunal after a consideration of the provisions of section 100(1)(c) of the Representation of the People Act, 1951, our judgment in the case of *Chandranath Versus Kunwar Jaswantsingh and others* and also the judgments of some other Tribunals, has on page 1463 observed as under:—

"We are in complete agreement with the views of the Bikaner Tribunal on this point. As a matter of fact, on a plain reading of section 100(1)(c), it is difficult to make any difference between the case of acceptance and that of rejection of a nomination paper. If it is necessary to prove in the case of improper acceptance that the result of the election was materially affected, it is equally necessary to prove it in the case of an improper rejection. However, there is a consensus of opinion of the various Tribunals and Election Commissions right from the year 1921 upto the present day that improper rejection of a nomination paper raises an initial presumption that the result of the election has been materially affected. We would, on the principle of *stare decisis*, not like to go against this view. We are, therefore, prepared to go so far that there is such an initial presumption that it requires strong and convincing evidence to rebut it, but no further.

The learned members of the Lucknow Tribunal in the case of *Shri Brijnarehsingh Versus Hon'ble Thakur Hukumsingh* seem to be of opinion that is the result of the loose drafting that the words "the result of the election has been materially affected" have been used in the context of the words "rejection" also and probably it is an accidental mistake on the part of the Legislature. Apart from the fact that the Tribunal cannot assume a mistake in an Act of the Legislature, there are grounds for believing that it is not due to any mistake or loose drafting that the said words have been used in connection with the acceptance as well as the rejection of a nomination paper. The Legislature must have been fully conscious of the various decisions of the Election Commissioners under the old law that it had been consistently held that it was very difficult to prove in the case of improper rejection that the result of the election had not been materially affected. In spite of this, they thought it proper to retain the words in question in the context of "rejection" as well. Moreover, it appears to be the anxiety of the Legislature that an election should not be lightly set aside on any technical grounds. The setting aside of an election is a very serious matter, as a good deal of time and money, which is spent, is spent in vain. The Legislature, therefore, thought that unless by any technical irregularity or illegality the result of the election has been materially affected, the election should not be declared to be void. This appears from the fact that the words "materially affected" do not occur only in section 100(1)(c), but also in clauses (a) and (c) of sub-section 2 of the said section. We are, therefore, of opinion that simply the difficulty of proving that the election has not been materially affected by the improper rejection of a nomination paper should be no reason to wipe off the clear words which occur in the clause in question.

Before we discuss the evidence in this case on this point, we may mention that we are conscious of the fact that with the exception of the two recent judgments—one of Jullundur Tribunal and the other of Bikaner Tribunal referred to above,

in all other cases the evidence in rebuttal was found to be insufficient; but that is a different matter, because every case depends upon its own facts."

After discussing the evidence in that case, the Jaipur Tribunal came to the conclusion that the improper rejection of the nomination paper in that case did not materially affect the result of the election. We see no reason to take a view on this matter different from the one we have taken in the two cases referred to above.

The only question for determination, which now remains is as to how far the presumption which initially arises in favour of the petitioner on account of the improper rejection of respondent No. 8's nomination paper for Jalore-B constituency, has been rebutted by the evidence led in this case. It has been alleged by the respondent No. 1 that Shri S. T. Porwal was a dummy candidate for and on behalf of the congress candidate Shri Ramchandra Singh, who is respondent No. 6 in this case; that he never meant to contest the election and that he would have withdrawn in favour of respondent No. 6 who was the official congress candidate, if his nomination paper had been accepted. Accordingly, he says that the result of the election has not been materially affected on account of the improper rejection of the nomination paper of respondent No. 8. In this connection the statement of Shri Porwal as P.W. 1 and statements of Shri Madan Raj Bhandari and Shri Nihalchand R.W. 1 and 2 and Exhs. A-11/A-14 to A-17 are material. Shri Madan Raj Bhandari who was the President of the Jalore District Congress Committee from June 1951 to 2nd July, 1952 has stated that in the last General Election Shri Ramchandra Singh respondent No. 6 was the Official congress candidate for the Jalore "B" constituency, that his name was recommended by the High Command and that respondent No. 6 was the only official candidate. He has further stated that he had instructions from the High Command that while submitting the nomination papers of the official candidate, he should also put at least 2 dummy candidates along with the name of the official candidate and that Shri Nihalchand and Shri S. T. Porwal were therefore set up by him as dummy candidates that after the nomination of Shri Nihalchand and also that of the official candidate Shri Ramchandra Singh respondent No. 6 were accepted, Shri Nihalchand withdrew from the contest under his instructions, that had the nomination paper of Shri S. T. Porwal been accepted, he would have asked him also to withdraw from the contest and he certainly would have withdrawn according to the party discipline, that there were five constituencies in Jalore district in all of which the official candidates set up by the congress were defeated and that the returned candidate Shri Harisingh secured 9000 votes whereas the respondent No. 6 secured about 4000 votes. He was cross examined only by the respondent No. 6 and not on behalf of the petitioner and has stated that he received the names of the official candidates from the High Command and the setting up of the dummy candidates was left to his discretion and that there was no change in that list in so far as Jalore "B" constituency was concerned. On this point there is the evidence of Shri Nihalchand R.W. 2 who stated that Shri Porwal and he applied to the Congress Pradesh Committee through the District Congress Committee to be selected as official candidates but their request was rejected in support of which he filed 4 documents marked as Exhs. A-18/R.W. 2 to A-21/R.W. 2. He has further stated that he was asked by the President of the District Congress Committee Shri Madan Raj ji to file nomination papers for Jalore "B" constituency as a dummy candidate, that Shri Porwal was the second dummy candidate set up by the President for Jalore "B" constituency, that he withdrew from the election as the nomination papers of the official candidates Shri Ramchandra Singh respondent No. 6 for this constituency was accepted, under the directions given to him by Shri Madan Raj, President of the District Congress Committee Jalore. He has also stated that had the nomination paper of Shri Porwal been accepted, he too was bound to withdraw according to the party discipline and that after his nomination had been rejected, Shri Porwal canvassed for respondent No. 6. This witness also was not cross examined by any one on behalf of the petitioner except by the respondent No. 6 in whose cross examination he has stated that he received the decisions of the High Command through the Pradesh Congress Committee, which he had filed in original, and that at the time of the election, he was a member of the District Congress Working Committee. Shri Porwal in his cross examination stated that he is a member of the Indian National Congress for the last 20 years, that in the beginning the Rajasthan Pradesh Congress Committee recommended the name of Shri Ramchandra Singh to be the official candidate to contest the election from Jalore "B" constituency that Shri Nihalchand Bhandari also filed his nomination paper for Jalore "B" constituency and that besides Ramchandra Singh, he also filed nomination papers to contest the election from this constituency as a congress candidate. He admitted that Shri Madan Raj Bhandari, the then President of Jalore District Congress Committee, wrote him a letter to file the nomination paper as a congress candidate, and that the Rajasthan Pradesh Congress Committee never authorised

him to file nomination papers for this constituency as a congress candidate, that Shri Baldeo Ram, Shri Jai Narain Vyas and he had filed nomination papers for Jalore "A" constituency, that Shri Baldeo Ram withdrew but he did not, that on 16/17th January, 1951 he withdrew from the contest under instructions from the Congress High Command the policy of which was to put only one official candidate in the contest, leaving Shri Jai Narain Vyas as the only congress candidate to contest the election in the Jalore "A" constituency. He admitted that he presented an application to the Returning Officer Jalore "A" constituency to the effect that in the interest of the congress he did not want to contest the election from Jalore "A" constituency, which shows that he was bound by the congress discipline, that the respondent No. 6 was recommended by the Rajasthan Pradesh Congress Committee to contest the election from Jalore "B" constituency as the High Command had authorised it to nominate any person from the Pradesh Committee whom it thought fit. He also admitted that the congress symbol was allotted to the congress candidate whose name was communicated by the Pradesh Congress Committee to the Returning Officer before the allotment of symbols, who in this case was the respondent No. 6.

It appears that Shri Porwal, Shri Nihal Chand Bhandari and Shri Ramchandra Singh applied for being set up as official candidates on behalf of the congress from Jalore "B" constituency, and the congress High Command after considering the merits of all the three candidates, selected the respondent No. 6 as its official candidate for "Jalore-B" constituency and communicated its decision contained in Ex-A-19/R.W.-2 to the candidates concerned. This decision of the congress High Command has been communicated with a letter, dated 24th October, 1951 which was more than a month before 26th November 1951, when the nomination papers had been filed before the Returning Officer. In this connection our attention has been drawn by the learned counsel for the respondent No. 1, to Exb. A-14 which is a certified copy of the list of the congress candidates from the Jalore district filed with the Collector Jalore which is dated 24th November, 1951; even this list does not contain the name of the respondent No. 8 Shri Porwal, but contains only the name of the respondent No. 6 as the official congress candidate from Jalore "B". There is another letter, dated 27th November, 1951, addressed by the President, District Congress Committee, Jalore, to the Returning Officer, Jalore marked as Ex-A-11, which contains the name of the respondent No. 6, Shri Ramchandra Singh as the principal candidate and respondent Nos. 5 and 8 as the dummy candidates. These three documents clearly show that the respondent No. 6 was put forth as the official candidate by the congress in this constituency and the respondents Nos. 5 and 8 had been put up as dummy or covering candidates, who were to withdraw in favour of the official candidate, after their nomination papers had been accepted. This is borne out by the fact that the respondent No. 5, Shri Nihalchand actually withdrew but no such question arose in the case of the respondent No. 8, Shri Porwal, as his nomination paper was not accepted. The learned counsel for the petitioner has drawn our attention to a certified copy of letter, dated 30th November 1951, addressed by the Election-in-Charge, Rajasthan Pradesh Congress Committee, Jaipur to all the Returning Officers of Rajasthan, marked as Exb. E-13, intimating to them that certain changes may have to be made in the list of approved candidates, for which the District Congress Committees had been authorised to communicate with them in order to expedite the election work, and has further argued that upto the date of this letter, no final selection about the official candidate had been made by the congress and that the respondent No. 8 had as much chance as the respondent No. 6 to be selected as such. In this connection he has also referred us to another letter, dated 1st December 1951 marked as Ex. A-12 addressed by Shri Madan Raj R.W. 1, as the President of the District Congress Committee Jalore to the Returning Officer, Jalore, in which he has intimated to the Returning Officer to allot the congress symbol of "TWO BULLOCKS WITH YOKE ON" to the authorised congress candidates in the five constituencies in the Jalore district, amongst whom, the respondent No. 6 Shri Ramchandra Singh was one for the Jalore "B". From this he has argued that it was only on 1st December, 1951 when the letter Ex. A-12 was addressed to the Returning Officer by the President District Congress Committee that it was finally decided that the respondent No. 6 Shri Ramchandra Singh should contest as the official congress candidate, and as this decision was arrived at after the filing of the nomination paper by the respondent No. 8 Shri Porwal on 26th November, 1951, and its rejection on 28th of the same month, it cannot affect the rights of the respondent No. 8 on the date of the nomination viz; 26th November, 1951. We regret we cannot agree with his contention, in as much as, the position that can possibly be made out of the documents marked as Ex. A-11 to A-14, Ex. A-17, Exs. A-18 to 21/R.W. 2, which have not been disputed by the petitioner and which relate to the selection of official congress candidates in the various constituencies in Jalore district, is that it had been finally decided in the month of October, 1951, vide letter of 24th October, 1951 along with a copy of the decision arrived at by-

the Rajasthan Provincial Congress Committee, Jaipur marked as Exb. A-18/R.W. 2 and A-19/R.W. 2 produced by the witness R.W. 2, Shri Nihal Chand who was himself a dummy candidate along with the respondent No. 8 Shri Porwal, that the respondent No. 6 Shri Ramchandra Singh shall contest the election in this constituency as a congress candidate, and it was further decided that the District Congress Committee in order to safeguard the interests of the Congress, will put up at least two dummy or covering candidates, who in this case were the respondents Nos. 5 and 8. After having taken up this decision in the month of October, 1951, a list of the official congress candidates for contesting elections in Jalore district was prepared on 24th November 1951 and filed before the Returning Officer, Jalore, by the District Congress Committee, marked as Ex. A-14, which has been admitted to be the true list, by Shri Madan Raj, R.W. 1 who was the President of the Jalore District Congress Committee. Thereafter a letter, dated 27th November 1951 was addressed by Shri Madan Raj, R.W. 1, as President of the District Congress Committee Jalore, to the Returning Officer, containing the names of the principal and dummy candidates, in the various constituencies in Jalore district, to which our pointed attention has been drawn by the learned counsel for the petitioner who has argued that this letter of 27th November, 1951, will have absolutely no bearing on the nomination of the respondent No. 8, which took place on 26th one day prior, as it is the date of nomination which is the crucial date, and has in connection referred us to the decision of the Indore Election Tribunal in the case of *Shri Brindaban Versus Sita Ram* and others reported in the *Government of India Gazette Extraordinary*, dated 1st April, 1953, at page 1009, containing the following observations:—

"This contention must be repelled for the simple reason that the material date for the determination of the question is that of the nomination, and if a nomination paper is improperly rejected and thus the right to stand for election is denied to any candidate, the subsequent acceptance of an office would not affect the issue. The status of the candidate and his eligibility must be considered with reference to that date, and not to events thereafter."

Before dealing with the above observations of the Indore Election Tribunal, it is necessary to refer to two more documents marked as Exbs. A-12 and A-13 which are dated 1st December and dated 30th November, 1951, respectively and Ex. A-13 is a letter addressed by the Rajputana Pradesh Congress Committee Jaipur to all the Returning Officers of Rajasthan asking them to allot the congress symbol of "TWO BULLOCKS WITH YOKE ON" to their official candidates, whose names shall be submitted by the District Congress Committees. In this letter it is also mentioned that "as certain changes may have to be made in the list of the approved candidates, we have authorised our District Congress Committees to submit such changes to you. It is only to expedite election business as we may not convey the change to you immediately in time." From this portion of this letter the learned counsel for the petitioner contends that the selection of the respondent No. 6 Shri Ramchandra Singh as the official congress candidate had not been finally decided even upto the date of this letter which was 30th November, 1951, in preference to the respondent No. 8 Shri Porwal, except that it was on 1st December 1951, when a letter marked as Exb. A-12 was addressed by the President, District Congress Committee, Jalore to the Returning Officer, Jalore to allot the congress symbol "TWO BULLOCKS WITH YOKE ON" to the respondent No. 8, Shri Ramchandra Singh who was the official congress candidate for Jalore "B" constituency. In our opinion, the letters Exbs. A-13 and A-12, dated 30th November, 1951 and 1st December, 1951, respectively do not suggest any such inference being drawn. The letter, dated 30th November, 1951, Ex. A-13 is a general letter addressed to all the Returning Officers which does not suggest that a change was contemplated in the selection of the respondent No. 6 as an official congress candidate, which was made in the month of October, 1951, *vide* Exbs. A-18-19/R.W. 2 and the list Ex. A-14 filed before the Returning Officer on 24th November 1951, and which had been confirmed subsequent to the filing of the nomination papers, by letters Exbs. A-11 and A-12, dated 27th November 1951, and 1st December, 1951 respectively. It is absolutely clear to us from all these documents that the decision appointing the respondent No. 6 as the official congress candidate made in the month of October, 1951, as stated above, was never changed nor was it a provisional decision, but it was a final decision according to which the respondent No. 6 was the official congress candidate whereas the respondents Nos. 5 and 8 were the dummy candidates and since it was arrived at much before the date of the nominations of the respondents Nos. 5, 6 and 8, according to their own admissions they were bound by it. In view of this, the discussion on the observations made by the Indore Election Tribunal in the above mentioned case, becomes unnecessary.

The next question for our consideration is whether the facts, which are sufficient to rebut the initial presumption which arises in favour of the petitioner *viz*; that the result of the election from Jalore "B" constituency has been materially affected,

on account of improper rejection of the nomination paper of the respondent No. 8 have been proved to the satisfaction of the Tribunal. From the above discussion of the evidence on the record both documentary and oral, the following facts have been proved:—

(1) That during the last general elections, the policy of the Indian National Congress, was to set up some dummy or covering candidates along with the official congress candidate, practically in every constituency, so that in case of the rejection of the nomination paper of the official candidate, the congress was not out of the contest, and it is also proved that as soon as the nomination paper of the official candidate was accepted, the other candidates were asked to withdraw and they in fact did withdraw, as they were bound by the congress discipline.

(2) That during the month of October 1951 i.e., much before the filing of the nomination paper, on 26th November, 1951, it had been decided by the congress High Command that respondent No. 6 Shri Ram Chandra Singh, shall contest the election in Jalore "B" constituency, as the official candidate on behalf of the congress, in preference to respondents Nos. 5 and 8.

(3) That Shri Nihalchand Bhandari, respondent No. 5 was set up as the first dummy candidate and Shri Porwal, respondent No. 8 as the second.

(4) That the selection of the respondent No. 6 as the official candidate in the constituency in question had been finally made before the filing of the nomination papers, and there is nothing to show that it was provisional and became final only on 1st December, 1951, when the returning officer was asked by the District Congress Committee, Jalore to allot the congress symbol to the respondent No. 6.

(5) That after the acceptance of the nomination paper of the respondent No. 6, the respondent No. 5 Shri Nihalchand withdrew his nomination under instructions from the President of the District Congress Committee, Jalore, Shri Madan Raj R.W. 1, from this constituency.

(6) That the respondent No. 8, Shri Porwal is an old congress man, and according to the mandate from the congress, he had to withdraw his nomination after the acceptance of the nomination of the respondent No. 6 as was done by the respondent No. 5 and also by him in the case of Jalore "A" constituency in favour of Shri Jai Narayan Vyas who was the official Congress candidate but the question of withdrawal by him did not arise in Jalore B constituency as his nomination paper was rejected.

(7) That the respondent No. 8 Shri Porwal has nowhere suggested in his evidence that he would certainly have contested the election from the constituency in question, inspite of the acceptance of the nomination paper of the official candidate, the respondent No. 6.

(8) That even the nomination paper of the respondent No. 8 for the constituency in question was filed up by the President of the district Congress Committee, Jalore, Shri Madan Raj R.W.1.

(9) That it is admitted by the respondent No. 8 in his evidence that he filed the nomination papers in this constituency after he received a letter to this effect from the President District Congress Committee, Jalore Shri Madan Raj, R.W. 1.

(10) That after the rejection of his nomination paper, the respondent No. 8 Shri Porwal worked and canvassed for the official congress candidate the respondent No. 6.

(11) That the respondent No. 8 has remained satisfied with the rejection of his nomination paper and has not filed any petition, though this fact by itself does not improve the case of the respondent No. 1 in any way.

In our opinion, therefore, the above facts, which have been proved beyond any doubt and which have not been challenged either on behalf of the petitioner or the respondent No. 8, conclusively rebut the presumption which initially arises in favour of the petitioner and we hold that the wrongful rejection of the respondent No. 8's nomination paper has not materially affected the election of the respondent No. 1 from the Jalore "B" constituency. We are also of the opinion that the above facts, are quite sufficient to bring us to this conclusion, and that this case is practically analogous with the case of Chander Nath *versus* Kunwar Jaswant Singh and others decided by us which is referred to above. We may also observe here that in view of the facts established in this case, we cannot come to a conclusion that on account of improper rejection of the respondent No. 8's nomination paper, the electorate of the Jalore "B" constituency has been deprived of their valuable right to cast their votes for respondent No. 8 who in fact was never meant to contest the elections from this constituency. We therefore decide this issue accordingly.

Accordingly the findings on the above issues are as under:—

Issue No. 1, first part in the affirmative.

Issue No. 1, second part in the negative.

Issue No. 2, in the negative.

Issue No. 3. Petition dismissed with no order as to costs.

Issue No. 3.—The result of our findings on the above issues is that the petitioner is not entitled to any relief and the petition stands dismissed. There only remains the question of cost. Since both the petitioner and the respondent No. 1 have succeeded in part, in our opinion the proper order shall be that each party shall bear his own costs.

M. P. ASTHANA, *Chairman.*

M. C. BHANDARI, *Member.*

GOVERDHANDAS T. GAJRIA, *Member..*

ORDER

The petition is dismissed with no order as to costs.

M. P. ASTHANA, *Chairman.*

M. C. BHANDARI, *Member.*

GOVERDHANDAS T. GAJRIA, *Member.*

The 23rd May, 1953.

[No. 19/314/52-Elec.III/8130.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*